

**Opposition by Co-Lead Class Counsel to the Objection of the NFL Parties to the  
Special Master’s Ruling on Application of the Definition of  
Eligible Season to Game Day Roster Designations**

**OVERVIEW & BACKGROUND**

Co-Lead Class Counsel submits this Opposition to the NFL Parties Objection to the Special Master’s Ruling on Application of the Definition of Eligible Seasons to Game Day Roster Designations (“Objections”). As the Court recognized in granting final approval to the Settlement, the “Eligible Season” was intended to serve as “a proxy for the number of concussive hits a Retired Player experienced as a result of playing NFL Football.”<sup>1</sup> Accordingly, consistent with the plain language of the Settlement Agreement—in alignment with the Settlement’s broader context—the Special Master properly ruled that Retired NFL Football Players on the Active List (that is the full 53-Man Roster) should earn credit toward an Eligible Season. Ruling at 8.

The NFL through its Objection again tries to strip Retired NFL Football Players who practiced all week (and were on their team’s Active List, but simply did not “suit up” for that week’s game) of any credit toward an Eligible Season. In the NFL’s view, notwithstanding their full participation and exposure to NFL activities—and hits—during the practice week, such inactive, but healthy, players get zero credit towards an Eligible Season for all of their Active List efforts. In sharp contrast, even those players who were never on an Active List but instead were only on a team’s developmental or practice squads would earn credit toward half an

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<sup>1</sup> *In re Nat. Football League Players’ Concussion Injury Litig.*, 307 F.R.D. 351, 409 (E.D. Pa. 2015), *amended sub nom. In re Nat’l Football League Players’ Concussion Injury Litig.*, No. 2:12-MD-02323-AB, 2015 WL 12827803 (E.D. Pa. May 8, 2015), *and aff’d sub nom. In re Nat’l Football League Players Concussion Injury Litig.*, 821 F.3d 410 (3d Cir. 2016), *as amended* (May 2, 2016), *cert. denied sub nom. Gilchrist v. Nat’l Football League*, 137 S. Ct. 591, 196 L. Ed. 2d 473 (2016), and *cert. denied sub nom. Armstrong v. Nat’l Football League*, 137 S. Ct. 607, 196 L. Ed. 2d 473 (2016).

Eligible Season. Indeed, were the NFL's tortured interpretation of the Settlement Agreement operative, Retired NFL Football Players on the Active List who did not "suit up" for a game would be treated no better than those Retired NFL Football Players who were unable to engage in football-related activities due to injuries or otherwise.

The NFL's arguments were considered by the Special Master, and were properly rejected: "[T]he plain meaning of the terms of the [Settlement] Agreement" requires that "NFL Players who were on the Active List on the calendar day of their Club's particular regular season or postseason game shall receive credit toward that game for the purposes of calculating an Eligible Season." Ruling at 8. The Court should affirm the Ruling of the Special Master and, in so doing, ensure that Retired NFL Football Players receive all of the benefits negotiated on their behalf.

### **The Settlement Agreement**

In granting Final Approval of the Settlement, the Court succinctly summarized the allegations of the dire situation faced by the Retired NFL Football Players after years of on-going exposure to head hits throughout their NFL careers:

MDL Plaintiffs allege that the NFL Parties fostered a culture surrounding football that glorified violence and a gladiator mentality, encouraging NFL players to play despite head injuries.

\* \* \* \*

MDL Plaintiffs allege that head injuries lead to a host of debilitating conditions, including Alzheimer's Disease, dementia, depression, deficits in cognitive functioning, reduced processing speed, attention and reasoning, loss of memory, sleeplessness, mood swings, and personality changes. MDL Plaintiffs also allege that the repetitive head trauma sustained while playing football causes a gradual build-up of tau protein in the brain, resulting in Chronic Traumatic Encephalopathy ("CTE"). CTE allegedly causes an increased risk of suicide, and many symptoms often associated with Alzheimer's Disease and dementia, as well as with mood disorders such as depression and loss of emotional control.

307 F.R.D. at 362.

In negotiating the Settlement Agreement, the Parties established a measure of the risk to which any given Retired NFL Football Player was exposed—the “Eligible Season.” While a Retired NFL Football Player did not need to establish any Eligible Seasons to register for the Settlement or to receive a Monetary Award when he was diagnosed with a Qualifying Diagnosis, the number of Eligible Seasons earned throughout his career determines the amount of his Monetary Award.<sup>2</sup> If a Retired NFL Football Player earned five or more Eligible Seasons, he is eligible for the full award at his age (subject to other offsets). Settlement Agreement § 6.7(b)(i). However, if a Retired NFL Football Player earned fewer than five Eligible Seasons, his award will be subject to increasing offsets, with a Retired NFL Football Player who earned no Eligible Seasons facing a reduction of his Monetary Award of 97.5%. *Id.*

An Eligible Season is not measured by how many years a Retired NFL Football Player was under contract with an NFL team. Rather, it considers the nature of a Retired NFL Football Player’s exposure to the risk of head hits. For example, a Retired NFL Football Player who was on his team’s Active List on the date of three or more regular or post-season games in a season earned an Eligible Season for that season. A Retired NFL Football Player who was not on the Active List, and only on his team’s developmental, taxi, or practice squad for eight or more games earned half an Eligible Season. Finally, a Retired NFL Player who was inactive due to injury would earn no credit toward an Eligible Season, unless he had a concussion or head injury.

The Settlement Agreement provides in full that an “Eligible Season” means:

a season in which a Retired NFL Football Player or deceased Retired NFL Football Player was: (i) on a Member Club’s Active List on the date of three (3) or more regular season or postseason games; or (ii) on a Member Club’s Active List on the date of one (1) or more regular or postseason games, and then spent at

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<sup>2</sup> Additionally, to be eligible for the other major benefit of the Settlement, the free examination under the Baseline Assessment Program, a Retired NFL Football Player needs to have earned at least one-half an Eligible Season. Settlement Agreement § 5.1.

least two (2) regular or postseason games on a Member Club's injured reserve list or inactive list due to a concussion or head injury.

A "half of an Eligible Season" means a season in which a Retired NFL Football Player or deceased Retired NFL Football Player was: (i) on a Member Club's practice, developmental, or taxi squad roster for at least eight (8) regular or postseason games; or (ii) on a World League of American Football, NFL Europe League, or NFL Europa League team's active roster on the date of three (3) or more regular season or postseason games or on the active roster on the date of one (1) or more regular or postseason games, and then spent at least two (2) regular or postseason games on the World League of American Football, NFL Europe League, or NFL Europa League injured reserve list or team inactive list due to a concussion or head injury.

Settlement Agreement § 2.1(kk).

The Settlement Agreement defines "Active List" as "the list of all players physically present, eligible and under contract to play for a Member Club on a particular game day within any applicable roster or squad limits set forth in the applicable NFL or American Football League Constitution and Bylaws."<sup>3</sup> Settlement Agreement § 2.1(a).

By way of comparison, the NFL Constitution and Bylaws ("NFL Constitution") provides that the "Active List . . . shall consist of all players eligible to play in any preseason, regular season, playoff, championship, or postseason game then under contract to the club within the applicable player limit as set out in the preceding section [Section 17.1]." NFL Constitution §

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<sup>3</sup> The Constitution and Bylaws applicable to the majority of Retired NFL Football Players first went into force on February 1, 1970 and was subject to occasional revision through to 2010. A copy of Article XVII of the NFL Constitution – "Player Limits and Eligibility" accompanies this Opposition. The Settlement-Agreement reference to the term "roster" only appears in the NFL Constitution and Bylaws when discussing the full 80 man roster, and required "roster reduction to [53] players on the Active List." NFL Constitution § 17.1 (C) and (D). The term "squad" only appears when discussing the "Practice Squad" (which consists of a limited number of free agents who will participate in practice from week to week and is separate from the Active List), and the "Left Squad" (which is part of the Reserve List). *Id.* §§ 17.1, 17.5, 17.17.

17.2.<sup>4</sup> The “preceding section” of the NFL Constitution, Section 17.1, sets forth the applicable player limits at particular points in time, noting that a team is required to reduce its Active List to 53 players from its full 80 man roster by the end of preseason. *See generally id.* § 17.1; *id.* § 17.1(F). Within the context of the Settlement Agreement, each of these 53 players would be under contract and eligible to play on a particular game day, thus satisfying the Settlement Agreement’s definition for inclusion on the team’s Active List on the date of a particular game.<sup>5</sup>

### **Approval of Eligible Seasons as a Reasonable Proxy for Head Injuries**

In support of Final Approval, the Parties made clear in their respective submissions that Eligible Seasons was a “proxy for the number of concussive hits a Retired Player experienced as a result of playing NFL Football.” For example, in their Memorandum of Law in Support of Final Approval of the Class Action Settlement Agreement and in Response to Objections (ECF No. 6422) (“NFL Final Approval Mem.”), the NFL said plainly that “to the extent retired players have alleged that playing football caused their injuries, it makes good sense to use the amount of

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<sup>4</sup> Section 17.14 of the NFL Constitution makes clear that there are three “lists” on which a player can be listed: Active List, Reserved List, and Exemption List. The NFL endeavors to use the term “eligible” to establish that the Parties could mean only the “45 Man” roster for the term Active List as used in the Settlement Agreement. However, the NFL Constitution (which drives the definition in the Settlement Agreement, says otherwise. Players on the full 53-Man Active List are eligible to play in any game. *Id.* § 17.2. Players on the Reserved List and Exemption List are ineligible to play. *See Id.* §§ 17.5, 17.6(A), 17.14(A) (taking players on the Exempt list off of the Active List). Players on the Active List who are announced to be inactive on any given week’s game day (the so-called “Inactive List”) are simply a subset of those on the Active List which are all the players eligible to play. A subset of the inactive players will be injured and may also be injured due to “concussion or head injury” as contemplated in the Settlement Agreement, Section 2.1(kk)(ii)(2). The NFL Parties repeatedly use a term “seasonal Active List” in their Objections, but there is no such list.

<sup>5</sup> Within a separate provision, the NFL Constitution further delineates the Active List, providing that one hour and 30 minutes prior to kickoff, requiring each club to establish its “45-player Active list” *for the game*, *id.* § 17.3 (emphasis added)—a distinction eschewed by the Settlement Agreement. Accordingly, the Special Master noted that “[i]f the parties had intended to specify that a Player must be on the Active List at the particular moment that the game starts [*i.e.* the 45 player roster] . . . they could have written the provision accordingly.” Ruling at 7.

time a retiree played in the NFL as a fair proxy for alleged exposure to repetitive concussive and subconcussive events—the key common allegation in all these cases.” NFL Final Approval Mem., at 6; *see also id.* at 18, 106-107, 108 n.48. Indeed, the NFL acknowledged that Monetary Awards under the Settlement are tied directly to the Retired NFL Football Player’s exposure to risk: “as a proxy for the exposure of a Retired NFL Football Player to repetitive head impacts while playing in the NFL, the Settlement Agreement applies an Offset based on the number of Eligible Seasons played. Thus, the more Eligible Seasons played, the smaller the Offset.” *Id.* at 18. Thus, in contrast to a Retired NFL Football Player on an “Active List”, a Retired NFL Football Player on injured reserve with a broken leg would earn nothing toward an Eligible Season: “the notion that a player should be given credit for the time he served on an injured reserve list for an injury . . . *other than a concussion or head injury*, makes no sense. For example, a Retired NFL Football Player who suffers a broken leg on the first day of training camp is unlikely to have experienced the same level of exposure as a player who played for a Member Club all season long.” *Id.* at 112.

Accepting the arguments of the Parties, and rejecting those of certain objectors, the Court found that Eligible Seasons, as a measure of a Retired NFL Player’s career, was “a proxy for the number of concussive hits a retired Player experienced”<sup>6</sup>

### **Proceedings Below & Ruling of the Special Master**

As summarized by the Special Master, the NFL wanted an absolute exclusion of any Retired NFL Football Player who was listed as inactive during any week, whether or not they

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<sup>6</sup> *In re Nat. Football League Players’ Concussion Injury Litig.*, 307 F.R.D. at 409. The Court of Appeals for the Third Circuit concurred “with the District Court that the definition of eligible season in the settlement was reasonable because it is a proxy for the number of head injuries.” *In re Nat’l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 444 n.14 (3d Cir. 2016), *as amended* (May 2, 2016) 821 F.3d 410, 444 n.14

were injured, arguing that allowing such player to earn credit toward an Eligible Season would render superfluous the crediting of “games on the Inactive List *due to a concussion or head injury.*” Ruling at 3. In contrast, the Special Master noted that “Co-Lead Class Counsel argue that the ‘letter and spirit’ of the Settlement Agreement is violated by excluding rostered Players who practice the week leading up to the game but were placed on the Inactive List 90 minutes before kickoff from Eligible Season accrual” as argued for by the NFL. *Id.*

The Special Master rejected the arguments of the NFL, and held that “the plain meaning of the terms of the Agreement” requires that “NFL Players who were on the Active List on the calendar day of their Club’s particular regular season or postseason game shall receive credit toward that game for the purposes of calculating an Eligible Season.” Ruling at 8. Following the letter of the Settlement Agreement, the Special Master also recognized that players who were sidelined with injuries (on Injured Reserve or inactive due to injury<sup>7</sup>) would not receive credit toward an Eligible Season unless they had a “concussion or head injury.” Ruling at 5, 7. The Special Master noted that this allowed players who received head hits throughout the week to receive credit towards an Eligible Season (rather than no credit). Ruling at 7-8.

Importantly, the Ruling, like the arguments of the Parties, was based on the language of the Settlement Agreement and the revisions of the 1970 NFL Constitution and Bylaws which provide that the list of inactive players is made minutes prior to the game. The NFL made no

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<sup>7</sup> The designation of “Injured Reserve” carries severe consequences for both the team and the player: a player on Injured Reserve is ineligible to play for the remainder of the season, even if he had been on the Active List and eligible to play. *See e.g.* NFL Constitution § 17.6 and 17.18. Accordingly, for the purposes of the Settlement Agreement, when injuries were not sufficiently grave to put a player on “the injured reserve list,” he will merely be placed on “the injured inactive list,” thereby missing practice and perhaps a game (and all related head hits) in the interim, but not sidelined for the entire season.

argument before the Special Master regarding the following, and upon which they now seek a different outcome than the one set forth in the Ruling:

- The bald assertion that some earlier revisions of the NFL Constitution (which the NFL did not present) provided that some players would be listed as inactive prior to game day, without providing extant copies of these earlier versions. Objection at 9.
- The new concern that injured players who are listed as inactive on game day might be given credit toward an Eligible Season even if they had not suffered a “concussion or head injury.” Objection at 3, 9.
- The declaration of Kenneth Fiore, which presents entirely new facts and relies (often without citation and always without providing copies) on documents other than the NFL Constitution—documents that are not incorporated by reference into the definition of “Active List” in the Settlement Agreement.

### **ARGUMENT**

Game day was the culmination of an entire week’s practice for Retired NFL Football Players on the Active List, but not all of these player would be allowed to “suit up” for the game. And only some of those who suited up would ever make it to the field. The Settlement seeks, among other benefits, to compensate Retired NFL Football Players for the harm they suffered over the course of their NFL careers, including (and often most critically) throughout a week’s practice. Recognizing the medical link between repeated head hits and certain neurocognitive conditions, the Settlement provides for Monetary Awards to Retired NFL Football Players who develop a Qualifying Diagnosis. The amount of a Monetary Award takes into account the length and nature of the Retired NFL Football Player’s career, by calculating his Eligible Seasons. As the Special Master held, Retired NFL Football Players on the Active List earn a full credit for the risk they were exposed to throughout the week, whether or not they ever ended up on the field. Retired NFL Football Players on developmental, taxi, or practice squads also earn credit, albeit less credit. Retired NFL Football Players sidelined with injuries earn no credit, unless their injuries relate to a head hit.



The Objections of the NFL should be rejected for two reasons. First, the NFL objects to the Ruling of the Special Master primarily through new arguments and new (and irrelevant) facts not raised earlier, including, most obviously, the entire Declaration of Kenneth Fiore. While the Court reviews *de novo* conclusions of law by the Special Master,<sup>8</sup> the Parties do not, thereby, enjoy *de novo* argument; new arguments and facts should be ignored by the Court.<sup>9</sup> Otherwise, referral made by the Court would be turned into a meaningless exercise.<sup>10</sup>

Second, even if the Court were to consider the new facts and arguments improperly offered by the NFL in its Opposition, the Court can and should affirm the holding of the Special Master: “NFL Players who were on the Active List on the calendar day of their Club’s particular regular season or postseason game shall receive credit toward that game for the purposes of calculating an Eligible Season.” And, by the plain language of the Settlement Agreement, players who were sidelined with injuries (except concussions and other head injuries) would not receive credit. This is the very purpose of the proxy established by the term “Eligible Seasons”—as a stand-in for head hits throughout any given week.

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<sup>8</sup> While review is *de novo*, the Court may rely on the Ruling to the extent it deems proper. *Gemmer v. Surrey Svcs. for Seniors, Inc.*, Civ. No. 10-810, 2010 WL 5129241, at \*1, n.1 (E.D. Pa. Dec. 13, 2010).

<sup>9</sup> See, e.g., *Lewis v. Astrue*, Civ. No. 11-3986, 2012 WL 1231878, at \*6 (E.D. Pa. April 11, 2012) (citing *Jimenez v. Barnhart*, 46 Fed. Appx. 684, 685 (3d Cir. 2002); *Commissariat A’ L’Energie Atomique v. Samsung Electronics Co.*, 245 F.R.D. 177, 179 (D. Del. 2007) (noting similarity to *de novo* review, rather than *de novo* hearing, under Rule 53 and 28 U.S.C. § 636); *Dunkin’ Donuts Franchised Restaurants LLC v. Mehta*, Civ. No. 07-0423, 2007 WL 2688710, at \*1 (W.D. Pa. Sept. 11, 2007) (rejecting declaration not previously submitted).

<sup>10</sup> See, e.g., *Net2Phone, Inc. v. Ebay, Inc.*, No. CIV.A. 06-2469 KSH, 2008 WL 8183817, at \*4 (D.N.J. June 26, 2008) (“courts generally exclude evidence of new arguments on objections ... because systematic efficiencies would be frustrated and the Special Master’s role reduced to a mere dress rehearsal.... In addition, it would be fundamentally unfair to permit a litigant to set its case in motion before the Special Master ... and—having received an unfavorable recommendation—shift gears before the reviewing judge.”) (citations and quotations omitted).

The NFL's late discovery of variations on the day the list of inactive players was announced does not change the letter and spirit of the Settlement Agreement. Indeed, none of the arguments put forth by the NFL below and none of the new facts and arguments made here compel any different outcome.<sup>11</sup> The question of whether a player is "eligible" to play is answered simply by being on the Active List. A player who was sidelined with injuries (either injured reserve or inactive) earns no credit unless the injury relates to a head hit. The question of whether a player inactive due to injuries will earn any credit turns on the nature of his injuries (or being on Injured Reserve and simply not eligible to play) not, as the NFL now endeavors to argue, on the date or time when the so-called Inactive List was announced. Indeed, the NFL's renewed effort to use the "Inactive List" to deny uninjured players on the Active List credit toward an Eligible Season leads again to the absurd result condemned by the Special Master. Active List players who did not "suit up" for a week's game would earn no credit toward an Eligible Season while players on the Practice Squad receive credit towards the specified half Eligible Season. *See* Ruling at 7-8.

### **CONCLUSION**

For all of the foregoing reasons, the Special Master's Ruling on Application of the Definition of Eligible Seasons to Game Day Roster Designations should be affirmed and the Objections of the NFL thereto denied.

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<sup>11</sup> The Court, of course, has the power to modify the Ruling to preserve the core holding by the Special Master in light of facts it may decide to consider. *See, e.g. Johnson v. Smithkline Beecham Corp.*, Civ. No. 11-5782, 2015 WL 1004308, at \* 8 (E.D. Pa. Mar. 9, 2015) (on *de novo* review under Rule 53(f), the Court may "adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.").

Dated: February 12, 2018

Respectfully submitted,

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# Exhibit

# **CONSTITUTION AND BYLAWS OF THE NATIONAL FOOTBALL LEAGUE**



**Effective February 1, 1970  
(Revised as of June 1, 2010)**

\*Provisions of the Constitution relating to players (in particular, Articles XII, XIV, XV, XVI, XVII, and XVIII) remain subject to the provisions of the Collective Bargaining Agreement.

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## **Article XVII**

### **Player Limits and Eligibility**

#### **Cutdowns and Player Limits**

- 17.1 (A) Subject to paragraphs (B) through (D) of this Section 17.1, clubs will be limited to a year-round roster limit of 80 players on the following combined lists: Active, Inactive, Reserve/Injured, Reserve/Physically Unable to Perform, Reserve/Non-Football Illness/Injury, Reserve/Suspended, Practice Squad, Exempt, and Future. The 80-player limit will not include any players on the following lists: Reserve/Retired, Reserve/Did Not Report, Reserve/Left Squad, Reserve/Military, un-signed draft choices, unsigned Veteran Free Agents, Unprotected Players, and players who have been declared ineligible to participate (suspended) by the Commissioner.
- (B) Any players placed on Reserve/Injured prior to the roster reduction to 65 players on the Active List will not count on the club's overall roster limit of 80 players, provided that the club requested waivers on the player with the designation "injured" and placed the player on Reserve/Injured immediately after the expiration of the claiming period and provided that all such players will count on the club's overall 80-man roster limit after 4:00 p.m., New York time, on the day of the cutdown to 65 players.
- (C) Any players placed on Reserve/Physically Unable to Perform or Reserve/Non-Football Injury/Illness prior to the roster reduction to 65 players on the Active List will not count on the club's overall roster limit of 80 players, provided that the club requests waivers on the player with the designation "Failed Physical" immediately upon reporting to training camp and failing the club's physical examination and that the club places the player on Reserve/PUP or Reserve/NF/I immediately after the expiration of the claiming period. All such players will count on the club's overall roster limit after 4:00 p.m., New York time, on the day of the cutdown to 65 players. All players so placed on Reserve/PUP or Reserve/NF/I shall not be eligible to play or practice for that club for the remainder of the regular season and postseason, notwithstanding other provisions in this Constitution and Bylaws. The same provisions shall apply to a Vested Veteran who is placed on Reserve/PUP or Reserve/NF/I immediately upon failing the training camp physical examination, provided that the club declares to the League office at such time that the player shall be ineligible to practice or play for the remainder of the regular season and postseason.

- (D) If a player has passed his club's training camp physical examination and is placed on Reserve/Non-Football Injury/Illness prior to the roster reduction to 65 players on the Active List, he will not count on the club's overall roster limit of 80 players, provided that the club requests waivers on the player with the designation "Non-Football Injury/Illness" and provided that the club places the player on Reserve/NFI immediately after the expiration of the claiming period. All such players will count on the club's overall roster limit of 80 players after 4:00 p.m., New York time, on the day of the cutdown to 65 players. All players so placed on Reserve/NFI shall not be eligible to play or practice for that club for the remainder of the regular season and postseason. The same provisions shall apply to a Vested Veteran who is placed on Reserve/NFI after passing his club's training camp physical examination.
- (E) If a player, after reporting to training camp, leaves his club without permission, and the club is granted an exemption, such player will not count on the club's overall roster limit of 80 players until 4:00 p.m., New York time, on the day of the cutdown to 65 players on the Active List, or until the player returns to the club, whichever occurs first.
- (F) Subject to the provisions of Section 17.3 of this Article, clubs will be required to reduce their Active Lists to 75 players by 4:00 p.m., New York time, on the Tuesday after the third preseason weekend and to 53 players by 6:00 p.m., New York time, on the Saturday of the fourth preseason weekend. The claiming period for players on waivers at the final cutdown shall be 12 noon, New York time, on the following day (Sunday).
- (G) No player may play with any team unless an executed contract with that team is on file in the office of the Commissioner, pursuant to the provisions of Section 15.6. This number shall include all veteran players upon whom options have been exercised for the applicable year, except a veteran player discharged for military service subsequent to June 1st in the applicable year.
- (H) Notwithstanding other provisions of this Constitution and Bylaws allowing recall of waiver requests under certain circumstance, the following rules are in effect with respect to waivers involving players who do not meet the physical standards of the club: Any waiver request on an injured player and any waiver request on a player who fails the club physical may not be recalled and no claim on any such player may be withdrawn.



**Active/Inactive Lists**

- 17.2 The Active List, for the purposes of this Article, shall consist of all players eligible to play in any preseason, regular season, playoff, championship, or postseason game then under contract to the club within the applicable player limit as set out in the preceding section. This Section 17.2, and succeeding Section 17.3 are in force only within the provisions of the applicable player limit in a given year.
- 17.3 One hour and 30 minutes prior to kickoff, each club is required to establish its 45-player Active List for the game by notifying the Referee of the players on its Inactive List for that game. Each club may also identify one player on its Inactive List who may dress for the game, provided that (1) such player is a quarterback; (2) the club has two quarterbacks on its 45-player Active List; (3) if the third quarterback enters the game during the first three periods, he must replace one of the club's other two quarterbacks, neither of whom may thereafter return to the game under any circumstances; and (4) if the third quarterback enters the game during the fourth period or any overtime period, he must replace one of the club's other two quarterbacks, either of whom is permitted to return to the game.

Players on the Inactive List, except for the Third Quarterback, are prohibited from participating in game day warm-ups with their teams for all preseason, regular season, and post-season games, except the Super Bowl game. Except for the Third Quarterback, they are also prohibited from dressing in game uniforms on game days, or representing their teams in pregame ceremonies. They may be in the bench area during the game provided they dress in clothing issued by the club to its game staff and display appropriate bench area credentials.

For the Super Bowl game only, Inactive List players may participate in game day warm-ups in their uniforms. During the game, they are permitted in the bench area, provided they dress in clothing issued by the club (which may include game jersey) to its game staff and display appropriate bench area credentials.

Any club that makes a roster change on game-day, subject to the provisions outlined above, also has the responsibility of confirming such change by NFLNet to the League office the following day.

**Future List**

- 17.4 (A) The Future List, for the purpose of this Article, shall consist of all players under contract to a club for a succeeding year or years but not for the current year. Clubs may not sign free agent players to their Future List until the day after the last day of the final regular season weekend (Tuesday if the final regular season game begins

on Monday). If the club of a Practice Squad player has completed its season (i.e., is not participating in the playoffs or has lost in the playoffs), such Practice Squad player may thereafter be signed as a free agent to any club's Future List. A free agent signed to a club's Future List is not eligible to be signed by any club for the current season. Contracts for players signed to a club's Future List will begin on February 1 of the subsequent year.

- (B) No player may practice with a club unless such player is signed to a contract with that club for the current or succeeding season or seasons. All contracts including contracts of players on the Future List must be filed with the Commissioner in accordance with the provisions of Section 15.3 hereof.

#### **Reacquisition of Players**

- (C) A player who has been traded or assigned via waivers cannot return to the club that took such action until two seasons, including the season of the year in which he left the club, have elapsed, unless one of the following exceptions applies:

#### **Reacquiring Traded Player**

- (1) Traded player must have been on the Active List of the assignee club, any club beyond the assignee club, or a combination thereof, for a minimum of four (4) regular season games, after which the original assignor club may reacquire the player by waiver assignment or free-agent signing. The four-game requirement specified herein may span two regular season if applicable; or
- (2) Traded player must have been on the Active List of the assignee club, any club beyond the assignee club, or a combination thereof, for less than four (4) regular season games and must have been placed on waivers and terminated by the assignee club or any subsequent club, in which case the original assignor club may reacquire the player only by free-agent signing. The original assignor club under these circumstances must not reacquire such player by trade or assignment via waivers; or
- (3) Traded player, before participating in any practice or game for the assignee club, must have reverted to the assignor club through conditions of a trade requiring his reporting to or passing the physical examination of the assignee club, or through a condition requiring him to execute a previously agreed-upon contract with the assignee club within a period of time agreed upon by the clubs, but in no event longer than

three business days after the trade has been approved by the Commissioner.

#### **Reacquiring Player Assigned Via Waivers**

- (4) Player assigned via waivers must have been on the Active List of the assignee club, any club beyond the assignee club, or a combination thereof, for a minimum of four (4) games while a player limit is in effect (preseason or regular season games, or a combination thereof), after which the original assignor club may reacquire the player by trade, waiver assignment, or free-agent signing. The four-game requirement specified herein may span two seasons if applicable; or
- (5) Player assigned via waivers must have been on the Active List of the assignee club, any club beyond the assignee club, or a combination thereof, for less than four (4) games while a player limit is in effect (preseason or regular season games, or a combination thereof) and must have been placed on waivers and terminated by such assignee club or any subsequent club, in which case the original assignor club may reacquire the player only by free-agent signing. The original assignor club under these circumstances must not reacquire such player by trade or assignment via waivers.

#### **Reacquiring Terminated Player**

- (6) There are no restrictions on reacquiring, in the same or a subsequent season, players who have been terminated via the waiver system, subject to restrictions that may appear in other parts of this Constitution and Bylaws.

#### **Evasion of Reacquisition Rules**

- (7) Any evasion of the rules covering reacquisition of players, including but not limited to procedures by a club to place a player on another club's roster in order to evade the former club's player limit, will result in appropriate discipline by the Commissioner against all involved clubs that are proven to have taken part in such maneuvers with prior knowledge of the evasion.
- (D) No player who opts for free agency under the waiver system section of the Collective Bargaining Agreement can re-sign with the same club in the same season or in the following season.

#### **Reserve List**

17.5 The Reserve List of each club may consist of players in the following categories:

- (A) Retired
- (B) Did not report
- (C) Left squad (quit team)
- (D) Injured
- (E) Physically unable to perform (at the time of the training camp physical)
- (F) N-F/I (Non-football injury or illness)
- (G) In military
- (H) Selected in Selection Meeting by the club, but never under contract
- (I) Suspended or declared ineligible, or expelled from the League for violation of the contract between the player and the club or for other reasons permitted by this Constitution and Bylaws.

Players placed on Reserve in the manner prescribed in (A), (B), (G), and (I) may apply to the Commissioner for reinstatement. Players placed on Reserve under (C) shall be governed by the provisions of Article 17.15(C).

Players placed on Reserve under (D) shall not be eligible to play or practice with the club for the remainder of the regular season and postseason under any circumstances. Players placed on Reserve under (E) are subject to the provisions of Article 12.3(E). Players on Reserve under (H) may be activated upon signing.

A player on a club's Reserve List shall not be eligible to contract with any other club unless and until the player is released or his contract assigned as provided in this Constitution and Bylaws.

#### **Reserve List Limitations**

- 17.6 (A) Unless this Constitution and Bylaws provides otherwise, any player on the Active List of the club who reports to the club and is thereafter placed on the Reserve List by reasons other than military service may not play with his club for the balance of that preseason or regular season unless waivers have been asked on such player, which waivers may not be recalled; provided, however, that if such player becomes an active player with another club and such other club thereafter asks waivers on him, and he is either claimed, released on waivers, or plays with another club in its league in that season, then the original club is entitled to restore such player to its Active List if it acquires him in a manner permitted by this Constitution and Bylaws or the rules of the League. If another club acquires such player from the Reserve List of another club by

means of a trade following the establishment of 65 active players, such player cannot play for the acquiring club for the balance of that season unless the acquiring club waives such player without recall.

- (B) Whenever a player is placed on the Reserve List of a club for any reason, the club must promptly submit a written report to the Commissioner stating the reason for such action. Upon receipt of such information, the Commissioner shall investigate the circumstances thereof in such manner as he deems appropriate. The Commissioner shall have the right to request further explanation or substantiation of the matter, and the club shall supply the same. In the event the Commissioner determines that placing such player on the Reserve List violated the provisions of Section 17.7 of the Constitution and Bylaws of the League, the Commissioner shall have the power to remove such player from the Reserve List and to take such other action against the club that he believes appropriate. Additionally, when such determination is made by the Commissioner, all expenses incurred by the Commissioner in any investigation thereof shall be charged against the involved club and such club shall be obligated to pay such expenses upon demand by the Commissioner.

#### **Evasion**

- 17.7 No club shall place any player on its Reserve List in order to evade the player limit.

#### **College All-Star Players**

- 17.8 Any player injured while a member of a preseason All-Star squad in connection with a game approved by the League may thereafter be carried without being counted as an Active Player for the determination of the applicable player limit and without requiring the club to place such player on its Reserve List. Such privilege shall continue until such player is able to play football. If such player, after being listed and counted as one of the Active Players within the applicable player limit, has a reoccurrence of the same injury, then such player may again be carried as a player of the club without being counted as an Active Player or being placed on the Reserve List until he again recovers from such reinjury. A medical report of the All-Star participant's injury must be filed with the League office as soon as possible after the All-Star game.

#### **Retired Players**

- 17.9 A Retired Player is defined as a player who discontinues professional football play in the League while under contract or option to a club. A Retired Player shall not be eligible to play football in the League until he shall have been reinstated by the Commissioner as provided in Section 17.13. Upon his reinstatement such player shall be eligible to play football only for the club entitled to his services at the time of his retirement or its assignee.

Notwithstanding the above, if such retirement occurs prior to the date that such player is required to report to the club's training camp, the player must provide written notification to the Commissioner of his retirement before his club shall be permitted to place him on its Reserve List, provided that no club shall be permitted to place a player on Reserve/Retired until 4:00 p.m., New York time, on the 15th day following the receipt of such letter by the Commissioner.

Such letter must be in a form acceptable to the Commissioner and must acknowledge that if the club places the player on Reserve/Retired prior to the date that such player is required to report to its training camp, such player shall not be eligible to be reinstated in the same season.

At any time prior to the expiration of the 15-day period that follows the receipt by the Commissioner of a player's retirement letter, a player may revoke such letter by written notification to the Commissioner, in which case the club shall not be permitted to place the player on its Reserve/Retired list prior to the date that such player is required to report to its training camp.

If any player is placed on Reserve/Retired on or after the date that he is required to report to his club's training camp, he shall be eligible for reinstatement pursuant to the provisions of Section 17.13.

#### **Military Service List**

- 17.10 Any player on the Active List for the first regular season game who is thereafter inducted into the Armed Forces of the United States shall automatically be placed on the Reserve List of his club and shall not count in the Active Player limit of said club nor be permitted to play or practice with the club until his reinstatement to the Active List, subject to the provisions of Section 17.13 and Section 9.3(C)(4).

The following additional rules shall apply in respect to the military service of a player:

- (A) No player who reports to his club after the commencement of training camp because of any reserve military obligations affecting

such player need be counted on the Active Player roster of the club until he receives one (1) day's practice for every day missed because of his military obligation, but not to exceed four (4) weeks, provided, however, if such player plays in one or more preseason games, he must be counted on the Active List.

- (B) No player reporting to his club after October 15 in any year need be counted on the Active or Inactive List unless the club wishes to activate such player for a regular season game.
- (C) Whenever a player reports to his team and thereafter is placed on military reserve to permit such player to fulfill the required two weeks of active military duty, such player shall be allowed one week following his return to the club before such player must be counted as an active player. However, if the club elects to play such player in any preseason or regular-season game, such player must be included on the Active List of such club.
- (D) None of the privileges accorded under the provisions of this Section 17.10 shall apply to players having military service obligations of less than a period embracing fourteen (14) days.
- (E) All clubs are obligated to notify the League office within forty-eight (48) hours of the time when any of its players are released from active military service and shall specify the date such player reported to the club. Failure of a club to comply with this provision will require the League office to treat the date such player was released from the service as the date when such player reported to the club.
- (F) Any player released from military service after October 15 and under contract to the club for such season may be placed on the Inactive List of that club and may be named to the Active List of the club and participate in any Divisional Playoff game, Conference Championship game, or Super Bowl game in accordance with the provisions of Section 20.6.

#### **Suspended Players**

- 17.11 A club or the Commissioner may suspend a player for violation of this Constitution and Bylaws, his NFL Player Contract, or the rules and regulations of the League or the club. During the period of suspension, a player shall not be entitled to compensation and shall be ineligible to play with any club. Any player suspended by a club shall have the right to appeal to the Commissioner, who shall have authority to order his reinstatement upon such terms as he deems proper. Players suspended by either the Commissioner or a club will be placed in the category of Reserve/Suspended. If the immediate former category of a player

suspended by a club was the Active List and the club wishes to lift his suspension and return him to the Active List, it may do so without requesting procedural-recall waivers, despite the provisions of Section 17.6(A) of this Constitution and Bylaws. Any club that places a player on Reserve/Suspended to evade the Active List limit will be subject to appropriate disciplinary action by the Commissioner.

#### **Ineligible Players**

- 17.12 The Commissioner may, on application of a club or on his own motion, declare ineligible a player who violates his contract, is guilty of conduct detrimental to the best interests of professional football, or who violates this Constitution and Bylaws or the rules and regulations of his club. Any ineligible player shall not be entitled to play for any club in the League until he shall have been reinstated by the Commissioner.
- 17.13 All players in the categories of Reserve/Retired, Reserve/Did Not Report, and Reserve/Veteran Free Agent Asked to Re-Sign will continue to be prohibited from being reinstated in the last 30 days of the regular season. Additionally, no player in such category will be reinstated between the trading deadline of the applicable season and the normal 30-day deadline unless the club initiates the reinstatement request and the Commissioner approves it.

#### **Listing of Players**

- 17.14 All players must be listed by the club on one of the following lists:

Active List  
Reserve List  
Exemption List

#### **Exemption List**

- (A) The Exemption List is a special player status available to clubs only in unusual circumstances. The List includes those players who have been declared by the Commissioner to be temporarily exempt from counting within the Active List limit. Any request for an Exemption must be sent to the Commissioner by NFLNet, e-mail, facsimile or other similar means of communication, and must include complete facts and reasons to support such request. Only the Commissioner has the authority to place a player on the Exemption List; clubs have no such authority. Except as provided in paragraph (1) of this subsection (A), no exemption, regardless of circumstances, is automatic. The Commissioner also has the authority to determine in advance whether a player's time on the Exemption List will be finite or will continue until the Commissioner deems the exemption should be lifted and the player



returned to the Active List. The following additional provisions govern the Exemption List:

- (1) Clubs participating in the American Bowl games shall be granted roster exemptions for any international players signed for such game, provided that the exemption extends for no more than 10 days and expires at 4:00 p.m., New York time, on the first business day after the game.
- (2) In no event will the Commissioner grant an exemption of more than two games in cases where a player fails to report to his club at the prescribed time. Whenever an exemption is granted in a case of late-reporting, it will be rescinded and the player added to the Active List as of 4:00 p.m., New York time, on the last League business day before he appears in playing uniform at a game of his club. A late-reporting player is defined as a player already under contract on his club's Active List or Reserve List or a player on his club's Reserve List as an unsigned draft choice or unsigned Veteran Free Agent who fails to report to his club at the prescribed time.
- (3) If a player who is eligible for a two-game roster exemption reports to camp prior to the time that a roster limit is in effect, the two-game maximum will be reduced by the number of games that the club has played since the player reported, provided that the club notifies the League office as soon as the player reports that it desires a roster exemption and provided that the player does not dress for or participate in a game.
- (4) If a player, after reporting, leaves his club without permission and the club is granted an exemption, such exemption will expire immediately upon the player's return to the club, unless the Commissioner deems it reasonable that the player is not in sufficient physical condition to return to regular participation.
- (5) It is permissible for a club to trade or request waivers on a player who is on the Exemption List. If such player is assigned to another club and the involved exemption is for a finite period of time, the assignee club will have available to it only the portion of the exemption which has not expired. If such player is assigned to another club and the involved exemption is not for a finite period of time, the player will immediately count on the assignee club's Active List unless the Commissioner deems it reasonable that the player is not in sufficient physical condition to begin or return to regular participation.

**Player Leaving Camp**

17.15 If a player leaves the camp of his club during either the training season or the regular season without permission, the following provisions shall apply in respect to such player:

- (A) If such player returns to his club within five (5) days from date of his departure, then the club shall be limited to the exercise of one of the following alternatives:
  - (1) The club may restore such player to its Active List, provided it either has maintained or immediately provides a place on its Active List within the applicable player limit; or
  - (2) The club may waive or trade such player.
- (B) If such player does not return to his club until five (5) or more days shall have elapsed from the date of his departure and the club did not retain a place on its active roster for such player, then the club shall have the right to exercise any one of the following options:
  - (1) The club may place such player on its Reserve List as a Retired Player; or
  - (2) The club may reduce its active roster to provide a place thereon for such player; or
  - (3) The club may waive such player or another player from its Active List.
- (C) Any player placed on the Reserve List as a Retired Player under the circumstances described in Section 17.15(B)(1) above shall remain on the Reserve List of the club for the balance of that season. In such event the obligation of the player to perform services as a professional football player for the club in that season shall be tolled. The term of such player's contract to his club for the balance of that season shall be extended and shall not commence until the player returns to professional football for such club. Additionally, any renewal option for such player's services shall be tolled and shall remain in effect until the end of such extended term of the contract. During any such retirement period, such player shall not be allowed to play football for any other club engaged in professional football; neither shall such player be entitled to any compensation, expenses, or other payments from his club under his contract.

- (D) Any player placed on the Reserve List as a Retired Player under the provisions described in Section 17.15(B)(1) shall not be entitled to reinstatement as an Active Player for the balance of the season in which such retirement occurs.
- (E) He cannot practice for the season.
- (F) Any violation or attempt to evade the player limit is conduct detrimental to football.

#### **Reserve/Injured**

17.16 The following rules govern Reserve/Injured:

- (A) **Purpose.** Reserve/Injured is a category of the Reserve List. A club may use this category for a player who is injured in a practice session or game of his club in any year after having passed the club's physical examination in that year. If a player fails the club's initial physical examination in any year, he is not eligible for Reserve/Injured; the club may instead use the procedures of Physically Unable to Perform or Non-Football Injury/Illness, whichever is applicable. A Non-Football Injury or Illness case may, in some circumstances, fall under the procedures of Reserve/Injured, but only if such injury or illness occurs after the player has passed the club's physical for that year.
- (B) **Participation While on Reserve/Injured.** Players on Reserve/Injured at any time may not play or practice or engage in any drill or any physical activity other than that required as part of their rehabilitation with that club for the remainder of the season, including postseason, under any circumstances. Players on Reserve/Injured are prohibited from appearing in games, participating in game-day warm-ups with their teams, dressing in game uniforms on game days, or representing their teams in pregame ceremonies. Reserve/Injured players may, however, attend team meetings, engage in rehabilitative work under the direction of the club's physician or trainer, observe practice, and serve their clubs on the sidelines, provided they perform a necessary function connected with the game, dress in clothing issued by the club to its game staff, and display appropriate credentials under the prevailing rules covering the bench areas.
- (C) **Compensation While on Reserve/Injured.** Players on Reserve/Injured are compensated at the full rate of their NFL Player Contracts (Paragraph 5).

- (D) **Injury Definition.** For purposes only of administering the procedures of Reserve/Injured, a minor injury is one which renders a player physically unable to play football for any period less than six weeks (42 calendar days) from the date of injury. Conversely, a major injury is one which renders a player physically unable to play football for a minimum of six weeks (42 calendar days) from the date of injury.
- (E) **Documentation.** All determinations of recovery time for major and minor injuries must be by the club's medical staff and in accordance with the club's medical standards. Such prognosis must be documented on the form "Verification of Injury/Illness Report," which must be completed in full by the club physician and countersigned by a working club executive or the head coach. This form must be filed in the League office within 15 days after the date the player is officially added to Reserve/Injured; if not, the club forfeits a spot on its Active List until it complies. The prognosis of the player's recovery time should be as precise as possible. When the verification form is received by the League office, the case receives a major or minor injury classification, which remains fixed unless the Commissioner grants special permission to reclassify after considering a revised prognosis by the club.
- The League's medical examination procedures shall include a network of qualified neutral physicians in each club's territory (including the training camp area). Such physicians shall be available to examine players within a short time (usually less than a week) after a player is injured.
- (F) **Evasion.** The Commissioner is authorized to take whatever steps he deems necessary to investigate any Reserve/Injured case that he has reason to believe may not have been handled properly by the involved club. If he determines that a club has abused the procedures of Reserve/Injured in order to evade the player limit or for any other reason, he may take appropriate disciplinary action.
- (G) **Minor Injuries.** If a club places a player with a minor injury onto Reserve/Injured, such player must be placed on no-recall waivers as soon as, in the judgment of the club, he is physically able to play football. Such players may not be reacquired by the club for the remainder of the season, including the postseason. This definition of a minor injury shall be applicable throughout the remainder of the season, including postseason, even if less than six weeks remain in a club's season. If, despite the original classification of minor injury, the player's recovery time continues into the following year, the waiver request must be before April 15.

- (H) **Contract Restrictions.** Whenever a player becomes subject to waivers under the rules governing Reserve/Injured, there must be no subsequent renegotiations or modification of his contract that constitutes a deterrent to claims by other clubs.
- (I) **N-F/I After Passing Physical.** Players who go onto the Reserve List under Non-Football Injury or Illness after passing the club's physical examination may not play or practice with the club for the remainder of the season, including postseason, under any circumstances, except for players placed on Reserve/NF/I pursuant to the terms of the NFL Drug Policy. Players on Reserve/Non-Football Illness/Injury shall not be traded.
- (J) **Trading From Reserve/Injured.** Players on Reserve/Injured may not be traded.
- (K) **Settlements.** Any financial settlement agreed to between a club and player concerning an injury shall cover a fixed period of time and shall be reported in detail to the League office. Such player then shall be carried on the club's Reserve/Injured list for the specified period covered by the settlement. Such listing must be for procedural purposes only, and the player must not practice with or be affiliated with the club in any way other than normal rehabilitation treatment. At the end of such specified period, the player must be placed on waivers.

Clubs also have the option of immediately requesting waivers on a player with whom they have negotiated a financial settlement. Any such waiver request shall carry the notation "Injury Settlement," and any such financial settlement must be reported in detail to the League office and must specify that the agreement does not obviate the League's waiver system. Players with whom a club has reached an injury settlement and for whom it has requested waivers (or terminated without waivers if the player had four or more pension-credited seasons) may not be reacquired by that club during the same season until a period of time has elapsed since the date of termination that is six regular or postseason games longer than the number of regular season games represented by the settlement (a bye week counts as a game). The above procedure shall also be applicable to a player who has been placed on Reserve/Injured or for whom a club has requested waivers with the designation "injured," provided that no later than 4:00 p.m., New York time, on the fifth business day after the date that the player was placed on Reserve/Injured or that waivers were requested, whichever occurs first, the club (1) executes and files an Injury Settlement with the league office, and (2) requests waivers for the player with the designation "Injury Settlement" (or terminates him without waivers if the player has four or more pension-credited seasons). A

player for whom waivers have been requested pursuant to an injury settlement is permitted to be claimed, and any player terminated pursuant to an injury settlement is permitted to sign with any other club, subject to customary rules. Clubs are permitted to pay the settlement amount in weekly installments or in other arrangements acceptable to player and club, provided that any amounts paid to the player are received no later than the last game represented by the settlement. Upon termination, such players are free agents and shall have no further contact with the club, other than a tryout and/or physical examination, until the date that they have become eligible to be re-signed by the club. The tryout and/or physical examination must be conducted within 14 days of the date that such players are eligible to be re-signed.

For purposes of this rule, Saturdays, Sundays, and holidays shall not be included in the five business days, even if the Player Personnel department is open for business and/or a Personnel Notice is transmitted on that day.

#### **Practice Squad**

- 17.17 After 12 noon, New York time, on the Monday prior to the first regular season game, clubs may establish a Practice Squad of five players, which is limited to players who are free agents and who do not have an accrued season of free agency credit, unless that season was achieved by spending an entire regular season on Reserve/Injured or Reserve/Physically Unable to Perform. A player who achieved his accrued season on Reserve/Injured or Reserve/Physically Unable to Perform may be signed to the Practice Squad of any club except the club that placed him in that category. Practice Squad players are eligible to be signed to the Active/Inactive List of other NFL clubs.

*See* 2004 Resolution MC-1 (providing that, subject to negotiation and agreement with the NFL Players Association, clubs may employ up to eight practice squad players for the 2004 season, and the League has the option to extend this arrangement for subsequent seasons), App., p. 2004-18

*See also* 2005 Resolution G-3 (extending 2004 Resolution MC-1, permitting clubs to employ practice squads not to exceed eight players for the 2005 season), App., p. 2005-7

*See also* 2006 Resolution G-3 (extending 2005 Resolution G-3), App., p. 2006-15

#### **Players Waived Injured**

- 17.18 (A) Players waived injured will continue to be no-recall and count against the applicable player limit if they clear waivers.

- (B) If a player is placed on injured waivers and the club remains below the applicable player limit at all times until such player clears waivers, the club may at that time return the player to its roster and use him in a game as soon as he is physically able.
- (C) If a player is placed on injured waivers and the club reaches the applicable player limit before such player clears waivers, the club cannot return the player to its roster but must immediately place him on Reserve/Injured.